

REMARKS

This application has been reviewed in light of the Office Action mailed December 14, 2009. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 1 – 4, 6 – 17 and 41 are pending in the application with Claims 1 and 41 being in independent form. By the present amendment, Claim 41 is amended and Claims 42 and 43 are newly added. No new subject matter is introduced into the disclosure by way of the present amendment.

I. Objection to Claim 41

Claim 41 is objected to for an informality. Specifically, the Examiner contends that “output” recited in Claim 41 should be “outputting” instead.

In response, Claim 41 is amended to correct the grammatical error. Accordingly, Applicants respectfully request withdrawal of the objection to Claim 41.

II. Rejection of Claims 1 – 4, 6 – 8, 10 – 17 and 41 Under 35 U.S.C. §103(a)

Claims 1 – 4, 6 – 8, 10 – 17 and 41 are rejected under 35 U.S.C. §103(a), as allegedly obvious over U.S. Publication No. 2005/0148842 (hereinafter, “Wang”), in view of U.S. Publication No. 2002/0111544 (hereinafter, “Iddan”) and U.S. Publication No. 2001/0051766 (hereinafter, “Gazdzinski”). Additionally, Claim 9 is rejected under 35 U.S.C. § 103(a) as allegedly obvious over Wang, in view of Iddan and Gazdzinski, and further in view of U.S. Patent No. 7,063,671 issued to Couvillon, Jr. (hereinafter, “Couvillon”).

Wang et al. discloses the LEDs and the optical sensor (See: FIG. 2). However, none of the LEDs or the optical sensor evaluate measurement data of the specimen on the basis of reference data, as recited in Applicants’ Claim 1. In other words, Wang et al. merely discloses the LEDs for emitting light and the optical sensor for detecting light from the irradiated area.

According to the MPEP, “All Claim Limitations Must Be Considered: all words in a claim must be considered in judging the patentability of that claim against the prior art” (See: MPEP §2143.03). Therefore, Wang et al. fails to disclose or suggest “...a specimen-evaluating section for evaluating measurement data of the specimen reacted in the reactor section on the basis of reference data and outputting an evaluation result...” as recited in Claim 1.

Iddan and Gazdzinski fail to disclose or suggest “...a specimen-evaluating section for evaluating measurement data of the specimen reacted in the reactor section on the basis of reference data and outputting an evaluation result...” as recited in claim 1. Therefore, even if Wang et al. is combined with Iddan and Gazdzinski, one having ordinary skill in the art would not have arrived at the features recite in Claim 1.

According to Claim 1, reciting the aforementioned configuration, an arithmetic operation can be performed by using the reference data and measurement data in the specimen-evaluating section so as to evaluate the specimen.

Therefore, the specimen-evaluating section can evaluate the specimen on the basis of the reference data inside the in-vivo information acquisition apparatus, and after the above evaluation an evaluation result is output from the in-vivo information acquisition apparatus.

Consequently, the above-identified effects of the present invention are unexpected over the prior art. Therefore, Claim 1 is believed to be non-obvious over the disclosure of Wang et al. even in view of Iddan and Gazdzinski. Accordingly, Applicants respectfully request withdrawal of the rejections with respect to Claims 1 – 4, 6 – 8, 10 – 17 and 41 under 35 U.S.C. §103(a) over Wang in view of Iddan Gazdzinski; and Claim 9 under 35 U.S.C. § 103(a) over Wang, in view of Iddan and Gazdzinski, and further in view of Couvillon.

III. Newly Added Claims 42 and 43

The features recited in newly added Claims 42 and 43 find support, for example, on page 27, line 10 through page 28, line 10 of the specification as originally filed. Therefore, no new subject matter is introduced into the disclosure by way of the newly added claims.

Additionally, Claims 42 and 43 depend from independent Claim 1, and thus include all the features recited by that independent claim. Accordingly, Applicants respectfully submit that Claims 42 and 43 are allowable over the cited prior art references for at least the reasons presented above.

CONCLUSIONS

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 – 4, 6 – 17 and 41 – 43 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,

/Thomas Spinelli/

Thomas Spinelli
Registration No. 39,533

Scully, Scott, Murphy, & Presser, P.C.
400 Garden City Plaza - Ste. 300
Garden City, New York 11530
(516) 742-4343
TS/DAT:dk